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CHARLES E. SMITH

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 837

SMITH BETTS,

Petitioner,

vs.

PATRICK J. BRADY, ~~WARDEN~~ OF THE PENITENTIARY OF
MARYLAND.

PETITION FOR WRIT OF CERTIORARI TO CARROLL
T. BOND, A JUDGE OF THE STATE OF MARYLAND,
BEING A JUDGE OF THE COURT OF APPEALS OF
MARYLAND FROM THE CITY OF BALTIMORE.

WILLIAM L. MARGURY, JR.,

JESSE SLINGLUFF, JR.,

Counsel for Petitioner.

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**PETITION FOR WRIT OF CERTIORARI TO CARROLL
T. BOND, A JUDGE OF THE STATE OF MARYLAND,
BEING A JUDGE OF THE COURT OF APPEALS OF
MARYLAND FROM THE CITY OF BALTIMORE, AND
BEING CHIEF JUDGE OF THE COURT OF APPEALS
OF MARYLAND.**

May It Please the Court:

The petition of Smith Betts, respectfully shows:

A.

Summary Statement of the Matter Involved.

The petitioner filed a petition for a Writ of *Habeas Corpus* before Judge Carroll T. Bond, a Judge of the Court of Appeals of Maryland, challenging the validity of a com-

mitment pursuant to which he was and is now being detained by the respondent. Judge Bond granted the writ and simultaneously entered an order, remanding petitioner to the custody of respondent. The purpose of the present petition is to have that order reviewed by this Court.

The order of Judge Bond disposed adversely of petitioner's claim that he had been denied the due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution. That claim was based upon the following facts, which are stipulated (R. 6):

Petitioner was arraigned in the Circuit Court for Carroll County, Maryland, on a charge of robbery. At the time of his arraignment he advised the trial Judge that he could not afford to employ counsel, and requested that counsel be appointed to represent him. The trial Judge advised petitioner that it was the practice in his court to appoint counsel for indigent defendants only in cases where murder or rape was charged. Petitioner's request for the appointment of counsel was denied. Petitioner pleaded not guilty. Five days later he was tried and found guilty. He was then committed to the custody of respondent for a term of seven years.

Petitioner filed a petition for a writ of *habeas corpus* in the Circuit Court for Washington County. The Judge of that court granted the writ and after hearing, at which petitioner was not represented by counsel, directed that petitioner be remanded to the custody of respondent. Petitioner thereupon filed his petition with Judge Bond who, after hearing counsel, disposed of the petition in like manner. Judge Bond delivered an opinion (R. 26), upholding the validity of the commitment pursuant to which petitioner is being detained by respondent, and denying petitioner's claim based on the Federal Constitution.

This Court has jurisdiction pursuant to Section 237 of the Judicial Code as amended. The petition for a writ of *habeas corpus* presented a substantial claim based upon the Federal Constitution. This claim was finally disposed of by the decision of Judge Bond, from which no appeal is allowed by the laws of Maryland. *State v. Boyle*, 25 Md. 509; *Annapolis v. Howard*, 80 Md. 244; *Gall v. Brady*, 39 Fed. Supp. 504, 508. The petition was presented to Judge Bond as the Judge of the Court of Appeals of Maryland from Baltimore City, pursuant to express statutory authority. The pertinent provision is found in the *Code of Annotated Public General Laws of Maryland (Flack's 1939 Ed.)*, Article 42, Section 1, and reads as follows:

"The court of appeals and the chief judge thereof shall have the power to grant the writ of *habeas corpus*, and to exercise jurisdiction in all matters relating thereto throughout the whole State. The circuit courts for the respective counties of this State and the several judges thereof, out of court, the superior court of Baltimore City, the court of common pleas of said city, the circuit court and circuit court No. 2 of Baltimore City, and the Baltimore City court, and the judges of said several courts, out of court, and the judge of the court of appeals from the city of Baltimore, shall have the power to grant the writ of *habeas corpus*, and to exercise jurisdiction in all matters pertaining thereto."

In *Sevinsky v. Wagus*, 76 Md. 335, that part of the statute which undertook to confer jurisdiction upon the Court of Appeals of Maryland or the Chief Judge thereof was held to be unconstitutional. At the same time the court reaffirmed the decision of *Ex Parte O'Neill*, 8 Md. 227, where it was held that any judge of the Court of Appeals had power to grant the writ of *Habeas Corpus*. It so happens that Judge Bond, in addition to being the Judge of the Court of Appeals from Baltimore City, is likewise Chief Judge of the court.

Although in such a proceeding, the Judge does not sit as the Judge of any court, it is obvious that he is performing a judicial function, and that proceedings before him constitute proceedings before a judicial tribunal. In view of the decision cited, it is likewise true that Judge Bond is the highest tribunal of the State before whom the petitioner could present his claim.

B.

Reasons Assigned in Support of the Petition.

The question presented is one which has not been directly disposed of by any decision of this Court. Recent cases, however, have given strong indications that this Court intends to hold that the Fourteenth Amendment requires that, upon request, counsel be furnished indigent defendants in criminal cases. *Powell v. Alabama*, 287 U. S. 45, p. 61; *Avery v. Alabama*, 308 U. S. 444; cf. *Smith v. O'Grady*, 312 U. S. 329. The question has already given rise to conflicting decisions in the lower Federal courts. *Boyd v. O'Grady*, 121 F. (2d) 146 (C. C. A. 8); *Achtien v. Dowd*, 117 F. (2d) 989 (C. C. A. 7); *Gall v. O'Grady*, 39 Fed. Supp. 504 (D. Md.); *Commonwealth v. Smith*, 11 A. (2d) 656 (Sup. Ct. Penna.).

The question is obviously one of great importance to the administration of justice. As such it not only justifies but requires the attention of this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to Carroll T. Bond, a Judge of the State of Maryland, commanding him to certify, and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case of *Smith Betts, Petitioner, v. Patrick J. Brady, Warden of the*

Penitentiary of Maryland, Respondent, and that his judgment and order remanding Smith Betts to Patrick J. Brady, Warden, may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray, &c. /

WILLIAM L. MARBURY, JR.,

JESSE SLINGLUFF, JR.,

Counsel for Petitioner.

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